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FILED IN THE
U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

Aug 08, 2023

SEAN F. McAVOY, CLERK

UNITED STATES DISTRICT COURT

EASTERN DISTRICT OF WASHINGTON

JOHN C. FOX,

No. 4:23-CV-5099-TOR

Plaintiff,

v.

ORDER DENYING *IN FORMA*
PAUPERIS STATUS AND
DISMISSING COMPLAINT

COUNTY OF BENTON,

Defendant.

On July 11, 2023, the Court received Plaintiff's *pro se* civil rights complaint. ECF No. 1. Plaintiff, a prisoner currently housed at Stafford Creek Corrections Center, did not pay the filing fee to commence this action as required by 28 U.S.C. § 1914. The Clerk of Court notified him of his deficiencies. ECF No. 2. He then failed to comply with 28 U.S.C. § 1915(a)(2), which requires prisoners who seek to bring a civil action without prepayment of the filing fee to submit a certified copy of their inmate account statement (or the institutional equivalent) for the six months immediately preceding the filing of the complaint.

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1 On July 27, 2023, Plaintiff submitted an inmate account statement that only shows
2 transactions through May 31, 2023. ECF No. 5.

3 The Court therefore denies Plaintiff's *in forma pauperis* request as
4 inadequate.

5 **PRISON LITIGATION REFORM ACT**

6 Under the Prison Litigation Reform Act of 1995, the Court is required to
7 screen complaints brought by prisoners seeking relief against a governmental
8 entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a).
9 Notwithstanding any filing fee, or any portion thereof, that may have been paid,
10 the Court must dismiss a complaint or portion thereof if the prisoner has raised
11 claims that are legally "frivolous or malicious," that fail to state a claim upon
12 which relief may be granted, or that seek monetary relief from a defendant who is
13 immune from such relief. 28 U.S.C. §§ 1915A(b)(1), (2) and 1915(e)(2); *see*
14 *Barren v. Harrington*, 152 F.3d 1193, 1194–95 (9th Cir. 1998).

15 A claim is legally frivolous when it lacks an arguable basis either in law or
16 in fact. *Neitzke v. Williams*, 490 U.S. 319, 325 (1989), *superseded by statute on*
17 *other grounds as stated in Lopez v. Smith*, 203 F.3d 1122, 1126–27 (9th Cir. 2000)
18 (en banc); *Franklin v. Murphy*, 745 F.2d 1221, 1227–28 (9th Cir. 1984). The
19 Court may, therefore, dismiss a claim as frivolous where it is based on an
20 indisputably meritless legal theory or where the factual contentions are clearly

1 baseless. *Neitzke*, 490 U.S. at 327. The critical inquiry is whether a constitutional
2 claim, however inartfully pleaded, has an arguable legal and factual basis. *See*
3 *Jackson v. Arizona*, 885 F.2d 639, 640 (9th Cir. 1989), superseded by statute on
4 other grounds as stated in *Lopez*, 203 F.3d at 1130–31; *Franklin*, 745 F.2d at
5 1227.

6 The facts alleged in a complaint are to be taken as true and must “plausibly
7 give rise to an entitlement to relief.” *Ashcroft v. Iqbal*, 556 U.S. 662, 664 (2009).
8 Mere legal conclusions “are not entitled to the assumption of truth.” *Id.* The
9 complaint must contain more than “a formulaic recitation of the elements of a
10 cause of action.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). It must
11 plead “enough facts to state a claim to relief that is plausible on its face.” *Id.* at
12 570.

13 On the basis of these standards, Plaintiff’s allegations fail to state a claim
14 upon which relief may be granted.

15 **BENTON COUNTY**

16 Plaintiff names Benton County as the only Defendant to this action. A
17 municipality or other local governmental entity cannot be held liable under
18 Section 1983 for their employees’ acts unless Plaintiff can prove the existence of
19 unconstitutional policies, regulations, or ordinances, promulgated by officials with

1 final policymaking authority. *City of St. Louis v. Praprotnik*, 485 U.S. 112, 121
2 (1988); *Monell v. New York City Dep’t of Soc. Servs.*, 436 U.S. 658, 690 (1978).

3 “[I]t is when execution of a government’s policy or custom, whether made
4 by its lawmakers or by those whose edicts or acts may fairly be said to represent
5 official policy, inflicts the injury that the government as an entity is responsible
6 under section 1983.” *Monell*, 436 U.S. at 694. While a single decision may
7 satisfy the “policy” requirement, that decision must have been properly made by
8 one of the municipality’s authorized decision makers—by an official who
9 “possesses final authority to establish municipal policy with respect to the
10 [challenged] action.” *Pembaur v. City of Cincinnati*, 475 U.S. 469, 479–81
11 (1986).

12 For Plaintiff to state a valid claim against Benton County under Section
13 1983, he must show either (1) that Benton County engaged in a pattern of failing
14 to properly train its employees and that the failure resulted in a violation of
15 Plaintiff’s constitutional rights, or (2) that a single decision was made by an
16 authorized policy maker, as defined by the Supreme Court in *Pembaur*, and that
17 the decision resulted in a violation of Plaintiff’s constitutional rights. Here,
18 Plaintiff presents no facts to indicate that Benton County has engaged in a pattern
19 or practice that resulted in the deprivation of his constitutional rights, or that a
20

1 single decision was made by an authorized policy maker that resulted in a
2 violation of his constitutional rights.

3 **INADEQUATE MEDICAL CARE CLAIM**

4 Plaintiff claims that the Benton County Correctional Facility failed to
5 transport him in 2018 to a medical/mental health facility for stabilization for pre-
6 existing conditions. ECF No. 1. He seeks his medical bills be paid for the rest of
7 his life, a mental health wing built in Benton County Correction Center and
8 \$101.00. ECF No. 3.

9 State law governs the timeliness of a § 1983 claim. *Nance v. Ward*, 142 S.
10 Ct. 2214, 2225 (2022). As such, a § 1983 claim must commence within the
11 statute of limitations for personal injury actions in the state where the cause of
12 action arose. *Wallace v. Kato*, 549 U.S. 384, 387 (2007). In Washington, a
13 personal injury action expires at three years. RCW § 4.16.080(2); *see also Bagley*
14 *v. CMC Real Est. Corp.*, 923 F.2d 758, 760 (9th Cir. 1991). Accordingly,
15 Plaintiff's claim is subject to dismissal as it is beyond the statute of limitations.

16 In the Ninth Circuit, a pretrial detainee's claim for a violation of the right to
17 adequate medical care arises under the Fourteenth Amendment's Due Process
18 Clause and is evaluated under an objective deliberate indifference standard.
19 *Gordon v. Cnty. of Orange*, 888 F.3d 1118, 1124–25 (9th Cir. 2018) (citing
20 *Castro v. Cnty. of Los Angeles*, 833 F.3d 1060, 1070 (9th Cir. 2016) (en banc)).

1 The elements of a pretrial detainee's medical care claim are: "(1) the defendant
2 made an intentional decision with respect to the conditions under which the
3 plaintiff was confined; (2) those conditions put the plaintiff at substantial risk of
4 suffering serious harm; (3) the defendant did not take reasonable available
5 measures to abate that risk, even though a reasonable official in the circumstances
6 would have appreciated the high degree of risk involved—making the
7 consequences of the defendant's conduct obvious; and (4) by not taking such
8 measures, the defendant caused the plaintiff's injuries." *Gordon*, 888 F.3d at
9 1125.

10 Whether a defendant's conduct is objectively unreasonable "turns on the
11 facts and circumstances of each particular case." *Kingsley v. Hendrickson*, 576
12 U.S. 389, 397 (2015) (internal quotation marks omitted). The "mere lack of due
13 care by a state official does not deprive an individual of life, liberty, or property
14 under the Fourteenth Amendment." *Castro*, 833 F.3d at 1071 (internal quotation
15 marks omitted). A plaintiff must "prove more than negligence but less than
16 subjective intent—something akin to reckless disregard." *Id.*

17 Here, Plaintiff names Benton County as the only Defendant to this action.
18 ECF No. 1. Plaintiff has not alleged facts sufficient to meet the objective
19 deliberate indifference standard and, as stated above, he has failed to name a
20 proper Defendant to this action. As presented, Plaintiff's factual allegations are

1 insufficient to state a claim upon which relief may be granted against Benton
2 County.

3 **EXHAUSTION REQUIREMENT**

4 It is not clear whether Plaintiff has exhausted his administrative remedies.
5 A prisoner may not bring a lawsuit with respect to conditions of confinement
6 under Section 1983 unless all available administrative remedies have been
7 exhausted. *Vaden v. Summerhill*, 449 F.3d 1047, 1050 (9th Cir. 2006); *Brown v.*
8 *Valoff*, 422 F.3d 926, 934–35 (9th Cir. 2005).

9 Exhaustion is required for all suits about prison life, *Porter v. Nussle*, 534
10 U.S. 516, 532 (2002), regardless of the type of relief offered through the
11 administrative process, *Booth v. Churner*, 532 U.S. 731, 741 (2001). Proper
12 exhaustion requires using all steps of an administrative process and complying
13 with “deadlines and other critical procedural rules.” *Woodford v. Ngo*, 548 U.S.
14 81, 90 (2006); *see also Jones v. Bock*, 549 U.S. 199, 218 (2007) (“it is the prison’s
15 requirements, and not the PLRA, that define the boundaries of proper
16 exhaustion.”). Any claim which is not exhausted prior to filing suit is subject to
17 dismissal for failure to exhaust.

18 **DENIAL OF *IN FORMA PAUPERIS* STATUS**

19 Pursuant to 28 U.S.C. § 1915(a)(3), “[a]n appeal may not be taken *in forma*
20 *pauperis* if the trial court certifies in writing that it is not taken in good faith.”

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1 The good faith standard is an objective one, and good faith is demonstrated when
2 an individual “seeks appellate review of any issue not frivolous.” *See Coppedge*
3 *v. United States*, 369 U.S. 438, 445 (1962). For purposes of 28 U.S.C. § 1915, an
4 appeal is frivolous if it lacks any arguable basis in law or fact. *Neitzke v.*
5 *Williams*, 490 U.S. 319, 325 (1989).

6 The Court finds that any appeal of this Order would not be taken in good
7 faith and would lack any arguable basis in law or fact. The Court hereby denies
8 Plaintiff’s *in forma pauperis* status.

9 **ACCORDINGLY, IT IS HEREBY ORDERED:**

- 10 1. Plaintiff’s Complaint is **DISMISSED without prejudice** for failure to
11 state a claim under 28 U.S.C. §1915(e)(2)(B).
- 12 2. Plaintiff’s *in forma pauperis* request is **DENIED**.
- 13 3. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal of
14 this Order would not be taken in good faith and would lack any arguable
15 basis in law or fact.

16 The District Court Executive is directed to enter this Order, enter judgment
17 of dismissal without prejudice, forward a copy to Plaintiff, and **CLOSE** the file.

18 **DATED August 8, 2023.**



A handwritten signature in blue ink that reads "Thomas O. Rice".

THOMAS O. RICE
United States District Judge